APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/500,921	02/09/2000	Florian Pestoni	AM9-99-0158	3221

28211 7590 06/09/2004		EXAMINER
FREDERICK W. GIBB, III		WILLETT, STEPHAN F
MCGINN & GIBB, PLLC		
2568-A RIVA ROAD	ART UNIT	PAPER NUMBER
SUITE 304	2141	12
ANNAPOLIS, MD 21401		

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO 90C (Rev 10/03)

	Application No.		Applicant(s)
	09/500,921		PESTONI, FLORIAN
Office Action Summary	Examiner		Art Unit
	Stephan F Willett		2141

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _11 March 2004_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-35_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-35_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC   112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and
> distinctly claiming the subject matter which the applicant regards as his invention.

2.   Claims 1-2, 5, 8, 10-11, 16, 20, 23-24, 27, 30, 33 are rejected under 35 U.S.C. 112,

second paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which applicant regards as the invention. The "protocol instance" is unclear.

3.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and
> process of making and using it, in such full, clear, concise, and exact terms as to enable any person
> skilled in the art to which it pertains, or with which it is most nearly connected, to make and use
> the same and shall set forth the best mode contemplated by the inventor of carrying out his
> invention.

4.   Claims 1-2, 5, 8, 10-11, 16, 20, 23-24, 27, 30, 33 are rejected under 35 U.S.C. 112, first

paragraph, as containing subject matter which was not described in the specification in such a

way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the

application was filed, had possession of the claimed invention. Specifically, "protocol instance"

is not enabled In this regard, the use of "multiplexor" in this application is not common,

however, the analogy is explained in the specification. To further prosecution, realize submitting

the "same" duplicate requests in a variety of situations, such as redundancy, error checking,

testing, etc. is a legacy process.

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form

the basis for the rejections under this section made in this Office action:

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1-3, 5-12, 14-18, 20-25, 27-31, 33-35 are rejected under 35 U.S.C. 102(e) as

being anticipated by Scholl et al. with Patent Number 6,145,001.

3.   Regarding claim(s) 1, 8, 16, 23, 30, Scholl teaches transferring a request to a multiplexor,

col. 6-7, lines 66-1. Scholl teaches generating a plurality of instances (requests) for each server

program, col. 7, lines 2-5, 25-27, 63 via a "network access protocol", col. 7, lines 31-33.

Instance, similar to object, is a broad term that refers to subclasses of object oriented code

running or instance data used in the instance. Scholl teaches "the appropriate data is the

collected [combined] in response to the managed network and objects", col. 7, lines 25-27 based

on "the Web client request" being translated "into at least one network management request",

col. 7, lines 61-63. The translated request is a subclass or instance performed by the

parser/formatter or a type of a multiplexor and vice versa as claimed. It is well known in the art

that a single request usually results in numerous sub requests (instances) from the initial request.

Scholl teaches transferring said request instances to the server, col. 7, lines 5-24. Scholl teaches

transferring a plurality of responses to said multiplexor, col. 7, lines 26-33. Scholl teaches

converting said responses into one response for the client, col. 7, lines 33-40.

4.   Regarding claims 2, 11, 17, 24, Scholl teaches specifying a target list of instance

requests, col. 7, lines 61-66.

5.   Regarding claims 3, 12, 18, 25, 31, Scholl teaches selecting an operation to combine

results, col. 6, lines 47-54, col. 7, lines 25-30.

6.   Regarding claims 5-6, 10, 14, 20-21, 27-28, 33-34, Scholl teaches automatic instantiation

and unaffected method as real time, col. 7, lines 54-55.

7.   Regarding claims 7, 15, 22, 29, 35, Scholl teaches an instance of the client program as

returning data to the client, col. 6, lines 50-51.

8.   Regarding claims 9, Scholl teaches altering requests, col. 6, lines 25-28.

Claim Rejections - 35 USC   103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

10.   Claims 4, 13, 19, 26, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Scholl et al. with Patent Number 6,145,001 in view of Rogers et al. with Patent Number

6,094,655.

11.   Regarding claim(s) 4, 13, 19, 26, 32, Scholl teaches transferring a request to a

multiplexor, col. 6-7, lines 66-1. Scholl teaches generating a plurality of instances (requests) for

each server program, col. 7, lines 2-5. Scholl teaches transferring said request instances to the

server, col. 7, lines 5-24. Scholl teaches transferring a plurality of responses to said multiplexor,

col. 7, lines 26-33. Scholl teaches converting said responses into one response for the client, col.

7, lines 33-40. Scholl teaches specifying a target list of instance requests, col. 7, lines 61-66.

Scholl teaches selecting an operation to combine results, col. 6, lines 4-54. Scholl teaches the

invention in the above claim(s) except for explicitly teaching specific operations to be performed

on response data. In that art, Rogers, a related data reporting system teaches "the DIS capsule

has created the file containing the report results " col. 9, lines 18-19 in order to identify relevant

user data. Rogers specifically teaches listing, adding, subsets, maximums, minimums and

averages, col. 18, lines 60-67, col. 23, lines 44-49. Further, Rogers suggests "a capsule object, as

a DIS capsule, can call other routines", col. 18, lines 445-46, 48-53 which will result from

implementing the requests for data. The motivation to incorporate diverse operations insures that

a diverse array of presentation mediums are available. Thus, it would have been obvious to one

of ordinary skill in the art to incorporate various data computations as taught in Rogers into the

data retrieval system described in the Scholl patent because Scholl operates with diverse data

sources and Rogers suggests that retrieved data can be reformatted into many forms. Therefore,

by the above rational, the above claim(s) are rejected.

Response to Amendment

12.   The broad claim language used is interpreted on its face and based on this interpretation

the claims have been rejected.

13.   The limited structure claimed, without more functional language, reads on the references

provided. First, An applicant can be their own lexicographer, however such definitions must be

reasonable and provided in the specification. The use of a multiplexor to generate multiple

requests and then also using said same multiplexor to combine multiple responses is a very

unusual "analogy" as described in the specification and is not that reasonable. Also, the

specification describes "multiplexing signals from one source to different sources" which sounds

more like multicasting. These idiosyncrasies are highlighted to exacerbate the breadth and

interpretation that can be made with certain words in this rejection which applicant's

specification exemplifies. Thus, Applicant's arguments can not be held as persuasive regarding

patentability.

14.   Applicant suggests "Scholl discloses a system that parses the client request into multiple

requests", Paper No. 9, Page 10, lines 3-4, but to different networks. The same rejection was

maintained to emphasize the present breadth of the claims and since multiple requests is taught,

but all the other limitations argued by the applicant are not claimed, and simply due to the fact

the reference has numerous other limitations and teachings does not obfuscate the teachings of

the present claims. For example, the Applicant also suggests "Scholl only directs a portion of

any client request to a single server", Paper No. 9, Page 9, lines 3. Repeatedly the Applicant

states "same request", but the above argument is not commensurate with what is presently

claimed and therefore will not be considered at this time. The applicant claims a legacy process

of redundant, duplicate, or the same requests being sent to similar or independent processors,

computers, servers or networks, but with unique terminology thus the words have an even

broader interpretation. Thus, Applicant's arguments can not be held as persuasive regarding
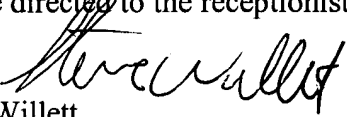
patentability.

Conclusion

15.   Prior art made of record and not relied upon is considered pertinent to applicant's

disclosure is disclosed in the Notice of References Cited, and note US Patent 5,802,368. The

other references newly cited teach numerous other ways to instantiate a single request into

multiple requests and provide a single response with regard to instances specifically, thus a close

review of them is suggested.

16.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The

examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

17.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rupal Dharia, can be reached on (703) 305-4003. The fax phone number for the

organization where this application or proceeding is assigned is (703) 746-7239.

18.   Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703) 305-9605.

Stephan Willett

Patent Examiner

June 4, 2004